

FILED-CLERK
U.S. DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION
02 APR -4 AM 11:00
TEXAS-EASTERN

FILED-CLERK
U.S. DISTRICT COURT
02 APR -4 AM 10:37
TEXAS-EASTERN

IN RE: ~~CERTAIN ASSETS OF~~
ALLEN PETTY, JR., a.k.a. AL PETTY

§ No. 6:02cv149
§ (Judge)

BY MLK

**GOVERNMENT'S MOTION FOR THE ENTRY
OF A PRE-INDICTMENT TEMPORARY RESTRAINING ORDER**

The United States of America, by and through its undersigned counsel, moves this Honorable Court for entry of a Temporary Restraining Order, pursuant to Title 21, United States Code, Section 853(e)(2), as incorporated by Title 18, United States Code, Section 982(b)(1).

I. INTRODUCTION

The purpose of the requested restraining order is to maintain the status quo of certain forfeitable properties and assets belonging to or under the control of **ALLEN PETTY, JR., a.k.a. AL PETTY (PETTY)**, until an investigation can be completed and forfeiture can be commenced against the properties.

Since on or about March 1, 2002, undersigned counsel has been assisting the Federal Bureau of Investigation (FBI) in the investigation of a telemarketing scheme in Smith County in the Eastern District of Texas. As set out in the affidavit of Special Agent James A. Hersley, said affidavit being incorporated by reference herein, it appears that PETTY has been perpetuating a Ponzi scheme in which he used the United States mails and interstate wires. Moreover it appears that PETTY has conducted financial transactions to conceal the ownership of proceeds of the scheme, some of which are in excess of \$10,000.

Under Title 18, United States Code, Section 1341, any scheme or artifice to defraud that is executed by using the Postal Service constitutes mail fraud. Under Title 18, United States Code, Section 1343, any scheme or artifice to defraud that is furthered by use of interstate wires constitutes wire fraud. Under Title 18, United States Code, Section 1961, mail fraud and wire fraud are specifically listed as "racketeering activities" for the purposes of alleging federal racketeering offenses. Under Title 18, United States Code, Section 1956(c)(7), all such racketeering activities are incorporated by reference as "specified unlawful activities" for purposes of the federal money laundering statutes, Title 18, United State Code, Sections 1956 and 1957. Under the money laundering statutes, financial transactions involving the proceeds of any specified unlawful activity constitute money laundering if the transactions were done to conceal or disguise the source or location of the proceeds (Section 1956(a)(1)(B)(i)) or if such transactions involve amounts in excess of \$10,000 (Section 1957(a)). Based upon the information set out in the attached affidavit of Special Agent James A. Hersley, the government believes that federal mail fraud, wire fraud and money laundering offenses have been committed by **PETTY**. In the event of **PETTY's** conviction on such charges, any and all assets involved in the money laundering offenses would be subject to forfeiture under Title 18, United States Code, Section 982(a)(1). Additionally any and all assets constituting, derived from, or traceable to the gross proceeds of a mail fraud or wire fraud offense involving telemarketing would be subject to forfeiture under Title 18, United States Code, Section 982(a)(8).

Based on the information set out in the attached affidavit of Special Agent James A. Hersley, the Government believes that federal mail fraud, wire fraud, and money laundering offenses have been committed by **PETTY**. In the event of a conviction of **PETTY** on such charges, any and all assets involved in the mail fraud, wire fraud, or money laundering offenses would be subject to forfeiture under Title 18, United States Code, Section 982(a)(1) and (8).

Based on the information available, it is now the intent of the United States Attorney's Office for the Eastern District of Texas to present the results of this investigation to a federal grand jury in this District to consider possible mail fraud, wire fraud, and money laundering offenses involving **PETTY**. As a result of the investigation by the FBI, the United States has identified assets that there is a substantial probability to believe were involved in or were the proceeds of the afore described mail fraud, wire fraud, and money laundering activities. For the reasons set forth in the accompanying affidavit of Special Agent James A. Hersley, there is a substantial probability that these assets would be forfeited pursuant to Title 18, United States Code, Section 982(a)(1) and (8) upon completion of the criminal investigation.

It is anticipated that the investigation and grand jury review can be completed in approximately six months. If the assets are not restrained pending the conclusion of the investigation, there is a substantial likelihood that these assets will be dissipated, destroyed, removed from the jurisdiction of this Court or otherwise made unavailable for forfeiture. Accordingly, the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on **PETTY** or any other party

against whom it is entered. Any resulting hardship to **PETTY** or other parties should be minimized since the requested order does not seek seizure of the properties, but rather simply short-term restraint to prevent the subjects of the investigation from dissipating or removing the assets from the Court's jurisdiction without giving the United States notice and an opportunity to be heard.

Given that **PETTY** appears to have conducted substantial financial transactions involving the proceeds of the scheme, the government asks to extend the temporary restraining order to include bank accounts opened in the name of various charities in order to preserve the assets therein. These accounts are potentially forfeitable because they were "involved in" the suspected money laundering offenses and as such are properly subject to restraint in the near term. Likewise because packages containing proceeds of the fraud may be in the possession of common carriers such as Federal Express and United Parcel Service, as described in the attached affidavit, these assets are properly subject to restraint in the near term in order to preserve them.

II. TERMS OF THE REQUESTED ORDER

The United States requests that the Court restrain, prohibit and enjoin **PETTY**, and any of his employees, agents, or any other person acting at his direction, and all parties presently having a possessory interest in his assets, from spending (ordinary living expenses excepted), selling, transferring, assigning, encumbering or otherwise attempting or completing any action that would affect or diminish the marketability or value of property or assets of the aforementioned individuals, without prior approval of this Court, and prior notice and an opportunity for the United States to be heard.

The United States requests this restraining order with respect to property which is subject to forfeiture pursuant to Title 18, United States Code, Section 982(a)(2)(A).

The property that is subject to the requested restraining order includes the following bank accounts and packages addressed to **ALLEN PETTY, JR., a.k.a. AL PETTY**, or **TeleCom 2000 Network** located at Federal Express, 1300 A. East Whaley, Longview, Texas, and United Parcel Service (UPS), 1709 East Whaley, Longview, Texas:

- 1) Checking account number 1421255, in the name of Independence 2000 America, Inc., d.b.a. TeleCom 2000 Network, at Southside Bank, Tyler, Texas;
- 2) Checking account number 1422294, in the name of Face to Face Ministries, at Southside Bank, Tyler, Texas;
- 3) Checking account number 1421646, in the name of The Church of Jesus Christ's Disciples, an Unincorporated Church, a.k.a. Christian Disciples International, at Southside Bank, Tyler, Texas; and
- 4) Checking account number 1406175, in the name of Allen Petty, Jr., d.b.a. TeleCom 2000 Network, at Southside Bank, Tyler, Texas.

III. MEMORANDUM OF POINTS AND AUTHORITIES

This Court's authority to enter the requested restraining order prior to the return of an indictment is founded in Title 21, United States Code, Section 853 (e)(2), incorporated by Title 18, United States Code, Section 982(b)(1), as follows:

A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction,

be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

Title 18, United States Code, Section 982, which incorporates the above restraining order provisions of Title 21 at Section 982 (b)(1), also establishes the basis for forfeiting the property and assets that would be restrained under the requested order. Section 982 (a)(1) and (8) provides that upon a defendant's conviction of the offenses under investigation, that is, mail fraud under Title 18, United States Code, Section 1341; wire fraud under Title 18, United States Code, Section 1343; and money laundering under Title 18, United States Code, Sections 1956 and 1957, the defendant shall forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.

Based on the attached affidavit of Special Agent James A. Hersley, there is probable cause to believe that PETTY has committed the mail fraud, wire fraud, and money laundering offenses giving rise to forfeiture of the properties and assets to be restrained, as described above. The affidavit also sets forth the substantial probability that all of the above-described property and moneys are criminally derived proceeds that are forfeitable upon the indictment and conviction of the subject of the investigation. 18 U.S.C. Section 982(a)(1) and (8).


It is anticipated that the grand jury will return an indictment against this individual in or about six months, and that the property and assets to be restrained will be charged with forfeiture in the indictment. Also as set forth more fully in the attached affidavit of Special Agent James A. Hersley, the United States may suffer irreparable harm if the restraining order is not entered as requested, in that there is a substantial probability that **PETTY** or his agents may sell, alienate, encumber, transfer or otherwise place or attempt to place certain interests, assets and property beyond forfeitable condition, thereby frustrating the ends of public justice. This is particularly true because of the fungible nature of the assets at issue, which **PETTY** appears to have used in numerous financial endeavors and which could easily be dissipated by further financial transactions or by electronic transfer. In this regard, the affidavit establishes that if the putative defendant was provided with notice and an opportunity to be heard prior to the imposition of this requested restraining order, such notice and hearing would jeopardize the availability of the property for forfeiture.

For the foregoing reasons, the United States respectfully requests the entry of a temporary restraining order for ten (10) days, pending further investigation, at which

time the United States will apply to the Court for the appropriate protective order pursuant to Title 21, United States Code, Section 853(e)(1)(A) or (B), as appropriate.

Respectfully Submitted,

MATTHEW D. ORWIG
UNITED STATES ATTORNEY


Traci L. Kenner
Assistant United States Attorney
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AFFIDAVIT OF JAMES A. HERSHEY

Being duly sworn, affiant states:

1) I, James A. Hersley, am a Special Agent of the Federal Bureau of Investigation (FBI), and have been so employed for approximately twenty-seven years.

2) I am currently assigned to the Dallas Division, Tyler Resident Agency, investigating individuals involved in fraudulent activity in violation of Federal criminal laws.

3) I am currently investigating possible violations of 18 U.S.C. Sections 1341 (mail fraud), 1343 (wire fraud), 1956 (money laundering), and 1957 (financial transactions with the proceeds of fraud) by Allen Petty, Jr., also known as Al Petty (herein after referred to as Petty).

4) Petty is a male born July 29, 1933, with a mailing address of P.O. Box 308, Overton, Texas 75684. Petty's residence and business are located at 23927 County Road 223, Overton, Texas 75684. On August 13, 2001, Petty incorporated a business named Independence 2000 America, Incorporated. On September 10, 2001, Petty filed an assumed named of TeleCom 2000 Network with the State of Texas. The documentation shows Petty to be the President, Registered Agent and Director of these companies. No other officers were listed as associated with these companies.

5) Petty advertises TeleCom 2000 as being a total communications network in which a person can purchase cellular phone service, long distance phone service, and a business that Petty guarantees will produce financial independence for the

investor. Financial independence is guaranteed by earnings of 500% to 1100% of the initial investment. Even at this stage of the investigation, the following facts indicate that TeleCom 2000 is a scheme to defraud investors by means commonly referred to as a Ponzi Scheme or Pyramid Scheme. Old investors are paid off utilizing funds supplied by new investors. The guaranteed payouts are unobtainable by any standard known to affiant.

6) A Cooperative Witness (CW), who was employed by Petty at the time, advised affiant that Petty is doing business as TeleCom 2000 Network. His business is operated out of a trailer house and another small building located on approximately 20 acres at 23927 County Road 223, Overton, Texas 75684. Petty runs the operation of the business on a daily basis. Petty employs approximately nine employees that work on site at the company in Overton. Information concerning all aspects of the business operation is input into computers located at the company.

7) CW supplied affiant with a video tape recording made during a convention held by TeleCom 2000 during January, 2002, at the Holiday Inn in Tyler, Texas. The video tape is labeled "TeleCom 2000, Teaching the Teachers." The CW also supplied affiant with two pamphlets distributed by TeleCom 2000 Network. The pamphlets are captioned "Ticket to our Opportunity-Conference Call" and "Rest of the Story."

8) In the video and the two pamphlets that were provided to affiant, Petty purports to offer a business opportunity wherein he guarantees the success of the business with earnings of 500%

to 1100% annualized return on a one-time, out-of-pocket cost. When an investor purchases a TeleCom 2000 Business, identified as a "Pro01," for \$1315.88, TeleCom 2000 provides the purchaser with a cell phone and guarantees that TeleCom 2000 will reimburse the owner for the cost of the cell phone and long distance service for one year, plus specified other guaranteed earnings over a six month period. The investors are to receive a total of \$3,779.34. The new business owner is identified as a "rep." A rep can upgrade his/her business by purchasing additional businesses in increments of one or more, at a cost of approximately \$1,000 for each additional business, i.e., upgrade to Pro02, Pro03, Pro04, up to a Pro50. Petty advertises that a purchaser can come into the program as a Pro50 at a cost of \$51,869.81, with a guaranteed return of \$297,972.24 in six months. A rep is not required to perform any type of service in connection with the purchase of the TeleCom 2000 Business. However, a rep can become a "sponsor" by soliciting other individuals to purchase TeleCom 2000 businesses. For each Pro01 a sponsor brings into the organization, the sponsor receives a guaranteed payment of \$3,625.

9) Although Petty promotes TeleCom 2000 as selling genuine businesses, it is difficult to discern what business activity is being sold. On the videotape, Petty explains that TeleCom 2000 furnishes its investors with: (1) A fourteen minute recorded message that one can call 24 hours a day; (2) "all the literature that it takes"; (3) conference calls that TeleCom 2000 conducts

on a regular basis with potential investors and sponsors; (4) the "Rest of the Story" pamphlet with all the applications and contracts needed for the business; (5) the payment charts. TeleCom 2000 also guarantees to give five reps to new businesses. Petty advises that reps should be interested in building their businesses, but may choose to simply rely upon the TeleCom 2000 guarantee.

10) Investors in TeleCom 2000 are solicited through several methods, including random telephone solicitation, Internet advertisements and fax blasting (use of facsimile machines with automatic dialing equipment). All potential investors must first listen to a fourteen minute recording played on the telephone. Sponsors of TeleCom 2000 contact as many people as possible in attempt to encourage them to listen to the fourteen minute recording. Many of the sponsors use automatic dialers to contact potential investors, playing the recording. Some individuals obtain a toll free number from Internet advertisements and listen to the recording upon calling that number. The fourteen minute recording is used as a screening device to identify individuals that might be inclined to invest in this type scheme. Petty tells TeleCom 2000 sponsors that if a potential investor listens to the entire fourteen minute recording and then takes the next step, they are interested. The next step is to contact TeleCom 2000 in Overton, Texas, by telephone. During this telephone call, the potential investor provides background information, including the investor's name, telephone number and fax number to

a TeleCom 2000 employee. An investor is required to have a fax machine. An information sheet entitled "Ticket to our Opportunity-Conference Call" is then sent by facsimile transmission to the investor. The background information concerning the investor is faxed to the potential investor's sponsor. The sponsor is encouraged to telephone the potential investor to promote the TeleCom 2000 program. Before investing in TeleCom 2000, the potential investor must participate in a national conference call conducted by Petty. Petty conducts these conference calls three times a week. The conference call includes all new potential investors and many of the experienced sponsors. The conference call lasts approximately three hours and is a promotional session moderated by Petty. If a potential investors wants to invest, another flyer, called the "Rest of The Story" is faxed to the investor. This flyer contains applications and additional information concerning how to invest in TeleCom 2000.

11) Affiant has reviewed a list of investors provided by CW. This list includes individuals located throughout the United States. Thus, it appears that interstate telephone wires have been used by Petty.

12) On January 2, 2002, Southside Bank, Tyler, Texas, prepared a Suspicious Activity Report (SAR) regarding Petty. Affiant has reviewed the SAR and the bank records relating thereto. The SAR stated that Petty, a telephone service marketer, conducted a suspicious transaction at the bank on

December 14, 2001. Bank records indicate that on December 13, 2001, two individuals named Paul Erickson and Randall Jarvis opened a charity account under the name, "The Church of Jesus Christ Disciples", an unincorporated church, aka "Christian Disciples International" with \$100 cash. On December 14, 2001, Petty deposited \$372,673.67 to this account. The deposit was in the form of two checks signed by Petty for TeleCom 2000 in the amounts of \$179,078.21 and \$193,595.46. On the same day, Petty entered the bank and opened a charity account in the name "Face to Face Ministries" with Petty and his brother, Daniel Petty, as signors on the account. The Church of Jesus Christ's Disciples then made a donation to Face to Face Ministries in the form of a check in the amount of \$363,356.82, which was deposited by Petty. While discussing the set-up of the accounts, Petty made numerous remarks to employees of the bank indicating that he had to "protect his money from the government, you know how they are" and that this was a vehicle to accomplish that goal. The SAR stated the documentation and demeanor of the individuals involved in these transactions left the employees with suspicions as to the legitimacy of these charitable donations. A few days after the initial transactions, Petty and his brother transferred \$140,000 back to TeleCom 2000 from the Face To Face account as a loan.

13) On March 25, 2002, CW advised affiant that cashiers checks in payment for purchases of TeleCom 2000 businesses are received at TeleCom 2000 on a daily basis via several mail

carriers, including Federal Express, United Parcel Service and the United States Mail. CW furnished copies of computer printouts that show that TeleCom 2000 has been receiving approximately \$170,000 worth of cashier's checks each day from clients.

14) CW advised that until approximately mid January, 2002, receipts from TeleCom 2000 were deposited daily to a business account at a bank. During January, 2002, Petty became concerned about the volume of money being received by the business and began hoarding the cashiers checks received from investors in a desk drawer at the mobile home in Overton. CW reported that the volume of receipts continued to grow until Petty instructed two employees to count the cashiers checks in the desk drawer. CW stated there was approximately four million dollars (\$4,000,000) worth of cashier's checks in the desk at that time. CW stated that Petty and Sabrina Wei, an individual recently employed by Petty to review the TeleCom 2000 business records, took approximately three and half million dollars (\$3,500,000) worth of cashier's checks and left the business on March 7, 2002. CW stated that no one else at the business seems to know what was done with this money. CW has overheard conversations at work indicating that Petty has a bank account offshore somewhere.

15) On March 25, 2002, CW also furnished affiant with a computer printout listing information concerning the sale of approximately 2379 TeleCom 2000 businesses. From an analysis of this information, affiant estimated that TeleCom 2000 has

received approximately \$10.5 million from investors and therefore has guaranteed payments to investors in the amount of approximately \$50 million.

16) On March 31, 2002, Petty distributed a document to several of the employees of TeleCom 2000. In this document, Petty describes what he calls a "Gratitude Pay Plan," which is essentially a severance agreement for his employees. In the agreement, Petty states he will pay each employee gratitude pay for a period of up to ten (10) months. The employee is warned that all gratitude pay to all employees will cease immediately if any employee files suit against TeleCom 2000, Petty, or any entities related to TeleCom 2000 or if anyone makes a negative report to any regulatory agency such as the FBI, Attorney General's Office, Federal Communications Company, Federal Trade Commission, or various other agencies. In the document, Petty notes that investors in TeleCom 2000 have "mortgaged homes and property, maxed out their credit cards, borrowed to the limit, taken all available funds from their IRA's, CD's, stocks and bonds, sent us cashier's checks that were purchased from their life's savings, insurance policies, Social 'Security', quit their jobs - becoming fully dependent on TeleCom 2000 for their livelihood, many of whom have retired from their life-long businesses, vocations and avocations." Petty goes on to say that "hundreds, or thousands of lives will be totally wrecked, declaring bankruptcy, living the balance of their lives under virtual 'poverty conditions', their recently-renewed hopes and

faith in their fellow man will be shattered if those forces who seek to destroy TeleCom 2000 and Al Petty are permitted to do so." Petty also states that he is selling TeleCom 2000 "due to recent events, too complex and debilitating to enumerate, and in order to continue to offer the 'TeleCom 2000 opportunity' on an increasingly effective domestic, as well as global scale." Although Petty does not identify the purchaser, he states that he will continue to serve as an "Executive Consultant."

17) On April 2, 2002, CW advised affiant that Telecom 2000 has moved from the mobile home in Overton, Texas. Based upon Petty's involvement with Sabrina Wei, a Canadian resident, CW believes that the office may now be located in Canada.

18) Affiant reviewed bank records from Southside Bank for account # 1421255, in the name of Independence 2000 America, Inc., D.B.A. TeleCom 2000 Network; and account # 1406175, in the name of Allen Petty, Jr., D.B.A. TeleCom 2000 Network, for the period February 16, 2002 to March 22, 2002. These records reflect deposits totaling \$3,603,509. A review of currency receipts for TeleCom 2000, furnished by CW, for the same period of time, shows currency receipts totaling \$7,138,835. Affiant does not yet know where the additional \$3,535,326 is located; however, on April 3, 2002, an employee of Southside Bank advised that significant amounts remain in the accounts mentioned above.

19) Based on affiant's investigation to date, including representations made by Petty in the video presentation and the pamphlets reviewed by affiant, it appears that TeleCom 2000 is

actually a type of scheme commonly referred to as a Ponzi scheme. In a Ponzi scheme, the entity involved conducts no legitimate business with which to generate return for investors. Instead, early investors are paid off utilizing funds supplied by more recent investors. As Ponzi schemes continue, funds are unavailable to pay the growing number of later investors. Ponzi schemes typically use the United States mail or interstate wires and are thus often prosecuted under the federal mail fraud and wire fraud statutes. Based on information received during this investigation to date, Petty appears to be operating a Ponzi scheme relying on new investors to pay old investors. It appears to be mathematically impossible for TeleCom 2000 to continue paying investors the guaranteed return.

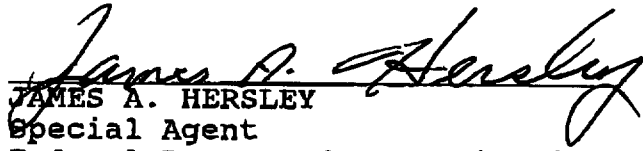
20) Even at this stage of the investigation, it appears that Petty is involved in a telemarketing scheme to defraud investors of their money and has caused the United States mail service and interstate wires to be used to further that scheme. Moreover, the financial transactions conducted by Petty appear to constitute federal money laundering violations. This is because mail fraud and wire fraud are racketeering activities as defined in 18 U.S.C. Section 1961(1), which is a specified unlawful activity for the purposes of money laundering statutes pursuant to 18 U.S.C. Section 1956(c)(7)(A) and 18 U.S.C. Section 1957(f)(3). As an FBI agent I am aware that most financial transactions involving the proceeds of specified unlawful activities constitute money laundering offenses. Further I am

aware that under 18 U.S.C. 982 all property involved in such money laundering violations is subject to forfeiture upon a defendant's conviction for money laundering. Property subject to forfeiture under these statutes is subject to restraint. Likewise, under 982(a)(8) property may be forfeited if a defendant is convicted of an offense under section 1341 or 1343 when the offense involves telemarketing. Property subject to forfeiture under these statutes is also subject to restraint.

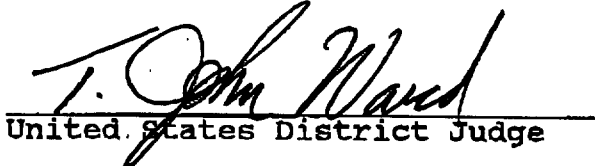
21) Even at this stage of the investigation, it appears that Petty may have committed mail fraud and wire fraud involving telemarketing and money laundering violations involving the proceeds of that fraud. Given that these assets can be easily dissipated by further transactions, including electronic transfer, immediate restraint of all bank accounts and investments in the possession of Federal Express and the United Parcel Service would be appropriate pending further immediate investigation to determine the extent of possible violations. It is requested that the following assets known or suspected to have been involved in the violations be restrained pending further investigation:

- 1) Checking account number 1421255, in the name of Independence 2000 America, Inc., d.b.a. TeleCom 2000 Network, at Southside Bank, Tyler, Texas;
- 2) Checking account number 1422294, in the name of Face to Face Ministries, at Southside Bank, Tyler, Texas;
- 3) Checking account number 1421646, in the name of The Church of Jesus Christ's Disciples, an Unincorporated Church, a.k.a. Christian Disciples International, at Southside Bank, Tyler, Texas; and

- 4) Checking account number 1406175, in the name of Allen Petty, Jr., d.b.a. TeleCom 2000 Network, at Southside Bank, Tyler, Texas;
 - 5) Packages addressed to ALLEN PETTY, JR., a.k.a. AL PETTY, or TeleCom 2000 Network located at Federal Express, 1300 A. East Whaley, Longview, Texas;
 - 6) Packages addresses to ALLEN PETTY, JR., a.k.a. AL PETTY, or TeleCom 2000 Network located at United Parcel Service (UPS), 1709 East Whaley, Longview, Texas.
- Further the affiant sayeth not.


JAMES A. HERSHEY
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me this 4th day of April,
2002.


United States District Judge